IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 21783 of 2003

Between:

JANDYAM SANKARAIAH S/O RADHAKRISHNAIAH
R/O D.NO.16-161, PATHAKOTA, VENKATAGIRI TOWN, NELLORE DISTRICT.

..... PETITIONER

AND

1 THE ASSISTANT COMMISSIONER ENDOWMENTS DEPARTMENT,

NELLORE.
2 EXECUTIVE OFFICER, ENDOWMENTS DEPARTMENT.
VENKATAGIRI TOWN, NELLORE.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or direction declaring the action of the respondents in trying to evict the petitioner from the house bearing Door No.16-161 situated at Pathakota, Venkatagiri town, Nellore District and seeking to demolish the house without following the procedure as contemplated under Section 83 of A.P., Charitable and Hindu Religious & Institutions & Endowments Act 1987 as illegal, arbitrary and without any authority and consequently direct the respondents not to interfere with possession and enjoyment of the petitioner of the house bearing Door No.16-161 situated at Pathakota, Venkatagiri town, Nellore

District.

Counsel for the Petitioner: MR.P.GANGA RAMI REDDY

Counsel for the Respondent No.1: GP FOR ENDOWMENTS

Counsel for the Respondent No.2: Smt.N.Indrani

The Court made the following :

ORDER:

The petitioner seeks to issue writ of mandamus declaring the action of the respondents in trying to evict the petitioner from the house bearing Door No.16-161 situate at Pathakota, Venkatagiri town, Nellore District and to demolish the said house without following the procedure as contemplated under Section 83 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act 1987 (hereinafter referred to as 'the Act') as illegal and arbitrary and consequently direct the respondents not to interfere with the possession and enjoyment of the petitioner of the said house.

The learned counsel appearing for the petitioner submits that originally 3½ ankanams situated at Pathakota belongs to B.Saraswathi Bayamma and she constructed a house and erected a bunk in front of the house and enjoying the same for more than 50 years by doing petty business. The Gram Panchayat, Venkatagiri has also assessed the said house to house tax and she was also paying the same to the said Gram Panchayat. The said Saraswathi Bayamma sold the said property to the petitioner on 11.8.1998 for consideration and since then the petitioner has been in enjoyment of the said house by paying house tax to the Gram Panchayat. While so, the respondents are now claiming that the property belongs to the Endowments Department and seeking to evict the petitioner by removing the house and bunk forcibly. It is stated that the action of the respondents in evicting the petitioner without giving notice and

without following the procedure contemplated under Section 83 of the Act is illegal, arbitrary and unsustainable.

Counter affidavit has been filed by the 2nd respondent stating that the subject land, in question, belongs to Poor House Trust, which is a charitable institution, and it is taken over by the Endowments Department in the year 1972 and the subject institution has got vacant site admeasuring 80 ankanas in the middle of Venkatagiri town and the petitioner is in no way concerned with the said land. It is stated that the said Saraswathi Bayamma unauthorisedly constructed and the petitioner has no right to purchase the said land in question and he is not possession and enjoyment of the land. Therefore, the question of initiating eviction proceedings under Section 83 of the Act does not arise as the original encroacher has left the site without raising any objection.

The learned counsel appearing for the petitioner submits that the petitioner is in possession of the said house and, therefore, it is for the respondents to initiate proceedings under Section 83 of the Act and according to which the Assistant Commissioner of Endowments has to send a report about the factual aspects as regards the encroachment and possession of the petitioner to the Deputy Commissioner of Endowments and it is for the Deputy Commissioner to pass eviction orders.

On the other hand, the learned Standing Counsel for the 2nd respondent submits that as the petitioner is not in possession of the property, it is for him to file a petition under Section 87 of the Act before the Deputy Commissioner of Endowments.

In view of the aforesaid rival contentions and disputed questions of fact, I am of the opinion that this Court cannot adjudicate the disputed facts as to whether the original encroacher Saraswathi Bayamma has left the site without raising any objection and whether the petitioner is contending as encroacher. All these matters are to be decided by the appropriate authorities. Therefore, the petitioner is not entitled for any relief in this writ petition filed under Article 226 of the Constitution of

India.

The writ petition is, accordingly, dismissed with liberty to the petitioner to take appropriate action under Section 87 of the Act.

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(V.ESWARAIAH, J.)

4.4.2005

kpr

To

1 THE ASSISTANT COMMISSIONER ENDOWMENTS DEPARTMENT,

NELLORE.

2 EXECUTIVE OFFICER, ENDOWMENTS DEPARTMENT.
VENKATAGIRI TOWN, NELLORE.

3. 2 copies to the Govt. Pleader for Endowments, High Court buildings,

Hyderabad.

4. 2 C.D. copies